IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

TUESDAY, THE 24TH JULY 2007 / 2ND SRAVANA 1929

CRL.A.No. 737 of 2007()

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SC.983/2001 of ADDITIONAL SESSIONS COURT (ABKARI CASES) KOTTARAKKARA

CP.54/2001 of JUDL.MAGISTRATE OF FIRST CLASS-II, KOTTARAKKARA

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APPELLANT/ACCUSED:

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ANIYAN KUNJU,
CONVICT NO.1503,
CENTRAL PRISON,
TRIVANDRUM.

BY ADV. ADV.BANI P (STATE BRIEF)

RESPONDENT/COMPLAINANT:

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STATE OF KERALA,
REPRESENTED BY A PUBLIC PROSECUTOR.

BY PUBLIC PROSECUTOR SRI. PUZHAKKARA MOHAMMED.

THIS CRIMINAL APPEAL HAVING BEEN FINALLY HEARD ON 24/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.THANKAPPAN, J.**

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**CRL. APPEAL NO. 737 OF 2007**

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Dated this the 24th day of July, 2007

**JUDGMENT**

The accused in S.C. No.983 of 2001 on the file of the Additional Sessions Court (Abkari Cases), Kottarakkara is the appellant. He faced trial for the offences punishable under Section 55(a) read with Section 8(1) and (2) of the Abkari Act.

2. The prosecution case against the accused was that on 20.12.1999 at about 10.30 a.m. , the accused was found in possession of 3 litres of arrack in a five litre white can at Kottarakakra - Oyoor road in front of the tea shop belonging to PW.2. To prove the case against the accused, the prosecution examined PWs.1 to 4 and produced Exts.P1to P6 as well as MOs.1 and 2. No oral or documentary evidence was adduced on the side of the defence. On closing the prosecution evidence, the accused was questioned under Section 313 Cr.P.C. Denying the prosecution allegation, the accused stated that he had not committed any offence and that the case was foisted against him by the excise officials. He also stated that he was

arrested from his house. However, after considering the entire evidence, the trial court found the appellant guilty of the offences charged against him, convicted him thereunder and sentenced him to undergo simple imprisonment for two years and to pay a fine of Rs.1,0,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of three months for the offence punishable under Section 55(a) of the Abkari Act read with Section 8(1) and (2) of the Abkari Act. The accused was also granted the benefit under Section 428 Cr.P.C.

3. This appeal is filed through the jail authorities and hence, the appellant is defended by a State Brief. This Court heard the learned counsel appearing for the appellant as well as the learned Public Prosecutor.

4. The main contentions raised by the learned counsel appearing for the appellant are (i) the trial court committed serious error in finding the appellant guilty of the charges basing on the evidence of PWs.1 and 4 alone as the independent witness did not support the prosecution case, (ii) the trial court did not consider the evidence of PW.2 properly and (iii) the sentence awarded is excessive.

5. The trial court placed reliance on the evidence of PWs.1 and 4 and found that the prosecution succeeded in proving the case against the appellant. PW.4 was the Preventive Officer attached to the Excise Circle Office, Kottarakkara who detected the offence. He deposed before the court below that on 20.12.1999 at 10.30 a.m., while he was on patrol duty along with PW.1 and other officials, he saw, the accused proceeding along the road holding MO.1 jerry can and that though the accused tried to escape on seeing the excise party, he was intercepted and questioned. He further stated that on examining the jerry can in the presence of witnesses, it was found to contain arrack and that he collected samples in two bottles and MO.1 can and the samples were sealed, labelled and seized as per Ext.P1 mahazar. This witness further stated that he prepared Ext.P3 arrest memo and arrested the accused and thereafter the accused and the contraband articles were produced before the Excise Range Office, Chadayamangalam.

6. The version of PW.4 is corroborated by the evidence of PW.1, the Preventive Officer who had accompanied PW.4 during the relevant time. He also spoke about the seizure of the contraband articles and the arrest of the accused. PW.2 who attested Ext.P1 mahazar stated that he did not know the accused. He also stated that he did not know the place

from where the contraband articles were seized by the excise officials. PW.3 was the Excise Inspector who sent the samples for chemical analysis. Ext.P6 is the chemical analysis report which shows that the sample contained 27.75% by volume of ethyl alcohol.

7. After considering the entire evidence, this Court is of the view that the trial court was fully justified in finding that the prosecution proved the case against the appellant beyond reasonable doubt. Hence, the first two contentions raised by the learned counsel appearing for the appellant are not sustainable.

8. The next question is regarding the sentence awarded by the court below. The trial court found that the appellant committed offences punishable under Section 55(a) read with Section 8(1) and (2) of the Abkari Act. It is clear from the evidence adduced by the prosecution that the appellant was found in possession of 3 litres of arrack on 20.12.1999 without any permit or licence. But the trial court committed an error in finding that the appellant committed offence punishable under Section 55 (a) of the Abkari Act. The offence would come only under Section 8(1) read with Section 8(2) of the Abkari Act. Taking into account the small quantity of arrack found in the possession of the appellant and the fact that

the prosecution had not established that the appellant was carrying the arrack for the purpose of sale, this Court is of the view that the substantive sentence of imprisonment awarded by the court below can be reduced from two years to one year. In the above circumstances, the appellant is sentenced to undergo simple imprisonment for a period of one year and to pay a fine of Rs.1,00,000/- and in default of payment of fine, to undergo simple imprisonment for a further period of three months.

With the above modification in the substantive substance, the Crl. Appeal is dismissed.

**(K.THANKAPPAN, JUDGE)**

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**K.THANKAPPAN, J.**

**CRL.APPEAL NO.737/2007**
**JUDGMENT**

**24TH JULY, 2007.**